



Crl.OP No.9663 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Crl.OP.No.9663 of 2024
and Crl.MP.No.9102 of 2023

1. G.Venkatanarayanan
2. K.Suja

... Petitioners

Vs.

Assistant Director
Directorate of Enforcement
Chennai

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 Cr.PC to set aside the order dated 05.03.2024 in Crl MP No.9102 of 2023 in Spl CC No.2 of 2023 on the file of the learned XII Additional Special Judge for CBI cases, Chennai and consequently postpone the commencement of trial in Special CC No.2 of 2023 on the file of the learned XII Additional Special Judge for CBI cases,



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Chennai until the proceedings in CC No.22 of 2014 on the file of the learned

XII Additional Special Judge for CBI Cases, Chennai has attained finality.

For Petitioner : Mr.B.A.Sujay Prasanna
For Respondent : Mr.A.R.L.Sundaresan
Additional Solicitor General of India
Assisted by
Mr.P.Sidharthan
Special Public Prosecutor

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

Under assail is the order dated 05.03.2024 passed by the XII Additional Special Judge for CBI Cases, Chennai in Crl.MP.No.9102 of 2023 in Spl CC No.2 of 2023.

2. The petitioners/accuseds are A1 and A2, both in the predicate offence and in the Prevention of Money Laundering Act, 2002 [hereinafter referred as *PMLA*] cases. An FIR was registered by CBI on 01.05.2013 under Section 120(B) r/w 13(2), 13(1) (e) of Prevention of Corruption Act. In view of registration of scheduled offence, the Enforcement Directorate recorded ECIR and launched investigation under the provisions of PMLA. After completing the



investigation, a complaint under Section 45(1) r/w Sections 3 and 4 of PMLA was registered before the competent Court of Law. Statements of the accuseds and other persons were recorded under Section 50(2) (3) of PMLA. Provisional attachment was made by invoking Section 5(1) of PMLA . The provisional attachment order was not confirmed by the Authority. The proceedings before the adjudicating authority was closed, in view of the orders passed by this Court and based on the undertaking given by the accused that they will not alienate the properties provisionally attached under Section 5(1) of PMLA.

3. At that point of time, the petitioners preferred a petition under section 309 of Cr.PC to stay all further proceedings in Spl CC No.2 of 2023 on the file of the Special Court for CBI cases, Chennai. The Trial Court considered the issues raised between the parties and dismissed the petition which resulted in filing of the present Criminal Original Petition before this Court under Section 482 of Cr.PC.

4. The “proceeds of crime” with reference to Section 2(1) (U) of PMLA are identifiable in the complaint registered by the Enforcement Directorate and the relevant portions are extracted hereunder :-

PMLA: BRIEF SUMMARY OF RESULT OF INVESTIGATION



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10.1 Shri G Venkatnarayanan was a central government employee and as per CCS (Conduct) Rule, every government employee is required to file Immovable Property Returns (IPR) and also the intimation to / permission is required to be obtained from the concerned department. As Shri G Venkatnarayanan, despite undertaking to produce, he did not submit the said intimation letter to the department for acquiring the immovable properties as listed above. Hence, in response to the summons dated 23.05.2022, his statement dated 27.05.2022 was recorded wherein he, interalia, stated that earlier he had been convicted by the Hon'ble Special CBI Court in CC No. 8/2014, later Hon'ble Madras High Court acquitted him in Crl.A 161/2016 in the graft case, but the Disproportionate Asset case in CC No. 22/2014 is in final stage before the Hon'ble Special CBI Court, that based on the orders on Hon'ble Madras High Court, he had been reinstated in the department and currently working in Chennai Office in Management System Certification Department. As regards the intimation to the department of acquiring assets, stated that he informed his department about the details of the property held in his and wife's name in the department's online portal and produced a copy thereof.



10.2 It is pertinent to mention that the Shri G Venkatnarayanan produced a copy of the online submission of the IPR for the properties purchased by him.

It is observed from the said copy submitted by him that on-line submission was done in the year 2021 which shows that he had not filed IPR when the said properties were purchased and hence, he, as an after thought, filed in 2021.

10.3 Smt K Suja in her statement dated 27.05.2022 interalia stated that cash credits in her salary account were from her matured fixed deposits and it had already been explained in her statement before the CBI; that source of income for those fixed deposits were from her savings that the deposits of Rs 20 lakhs in her account was the monies she had received from her mother, which had derived from the agricultural activities of her mother, that she had already provided the intimation about the properties held in her name in assets and liability statement filed before her department.

10.4 Though she stated that she had already explained to CBI about the receipt of the said Rs.60 lakhs cash in her account from the maturity of the fixed deposits but from the charge sheet filed by CBI, it appears that they had already taken care of all the fixed deposits and interest accrued on such fixed deposits while calculating her legal source of income during the check period. In this connection, the Table V above may please be referred. For the sake off



clarity, the table showing the interest received during the check period on fixed deposits and other investments are tabulated below.

Table VIII

1	<i>Interest earned during check period from the recurring deposits held in the name of Master Aditya and Ms Sanjana</i>	98,000
2.	<i>Interest earned by K Suja and G Venkatnarayanan during check period of the FDs in Laxmi Vilas Bank Bank, Kodambakkam Branch</i>	2,43,601
3.	<i>Interest earned by K Suja and G Venkatnarayanan during check period from the investment made in Indian Bank before the check period.</i>	19,127
4.	<i>Total income of Interest earned by K Suja and G Venkatnarayanan during check period from the 17 reinvestment plans at Indian banks branches at Harbour, Kundrathur and Rangarajapura which were invested and got matured during the check period.</i>	3,20,222
5.	<i>Total income of Interest earned by K Suja and G Venkatnarayanan during check period from the 27 reinvestment plans at Indian banks branches at Harbour, Kundrathur and Rangarajapura which were invested during the check period and got matured after check period</i>	36,988
	<i>Total</i>	7,15,938

10.5 As explained above that CBI in their charge sheet, while calculating the income and asset, have already taken care of all the investments and the interest accrued thereon. Hence, even going by her statement that the same has been explained to CBI, the same has been taken care of such earnings during the check period. However, she did not produce any evidence to show her fixed



deposits and also the source of the said fixed deposits other than saving that she had already explained to CBI.

10.6 It is worthwhile to note that fixed deposits amount is automatically get credited to the account and there is no need to deposit cash in the account arising out of the said fixed deposits. She herself being the bank officer must be aware of this issue. It is also found that cash deposits are always ending with multiple of 1000 and not in odd numbers. Some of the cash deposits made by her in her salary account with Indian Bank, Harbour Branch, Chennai during the said period are tabulated below for reference.

Table-IX

<i>Date of Transaction</i>	<i>Narration by Bank</i>	<i>Amount in Rs.</i>
12.04.2008	By cash deposits by self	50,000
19.06.2008	By cash deposits by self	47,500
26.06.2008	By cash deposits by self	45,000
08.09.2008	By cash deposits by self	39,000
11.09.2008	By cash deposits by self	40,000
20.06.2009	By cash deposits by self	49,000
25.06.2009	By cash deposits by self	17,00,000
01.09.2009	By cash deposits by self	50,000
21.04.2010	By cash deposits by self	49,000

The enquiry was conducted with the concerned Harbour branch, Chennai of Indian bank who vide their email dated 21.02.2023 and letter dated 23.02.2023 informed that above deposits are cash deposits only. It was further informed that other than the deposit on 21.04.2010 which was made at



Kundrathur Branch, Chennai, others cash deposits were made at Harbour branch only.

10.7 It is also seen that Shri N Gopendran, Income Tax officer of Salary Ward III (4) assessing officer of the Income Tax Returns of Smt K Suja, in his statement dated 17.01.2014 before the CBI, had already stated, interlia, that he had handed over the Income Tax returns for the assesseement year 2005-06, 2006-07, 2008-09, 2010-11, 2011-12 an 2012-13 of Smt K Suja having PAN ALDPK8901G to CBI and further stated that she had not shown any income either from agriculture or from rent in her Income Tax returns for the year stated above.

10.8 Similarly, Shri K Hariharan, Income Tax officer of Salary Ward 1 (4) assessing officer of the Income Tax Returns of Shri G Venkatnarayanan were, in his statement dated 22.01.2014 before the CBI, had already stated, interlia, that he had already forwarded the Income Tax returns for the assessment year 2005-06, 2006-07, 2010-11 and 2011-12 of Shri G Venkatnarayanan having PAN AAJPV0246N to CBI and that he (Shri G Venkatnarayanan) had not shown any income either from agriculture or from rent in his Income Tax returns for the year stated above.

10.9 This is further to mention that mere mention of cash credit in the assessment order does not confirm that the amount is from legal sources and



it merely involves tax charges.

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10.10 Therefore, on analysis of the statements, other documentary evidences/materials collected during the investigation, it is revealed that Shri. G. Venkatanarayanan and Smt. K. Suja, while working as Public Servants in various capacities by abusing their offices have amassed huge wealth disproportionate to their known source of income and subsequently by using the illegitimate money and with an intention to conceal its origin have acquired immovable properties to the tune of Rs.1,77,27,000/-, which is nothing but proceeds of crime and projected the same as untainted.

5. The Hon'ble Supreme Court in *Vijay Madanlal Choudhry's case* held that discharge or acquittal in the predicate offence is a ground to seek exoneration from PMLA proceedings.

6. Therefore, the trial Court has to proceed with the predicate offence at the first instance and after disposal of the predicate offence, PMLA case is to be taken up for trial and disposal. Since, the trial Court disagreed with the said ground, the present petition came to be instituted before this Court.

7. The Special Public Prosecutor would oppose by stating that the legal position is otherwise and the predicate offence trial is not dependant on the



PMLA trial. Both are distinct and different and the provisions of the PMLA would amplify, the said position and further judicial verdicts are in support of the respondent. Thus, rejection of the grounds raised by the petitioner by the trial Court is in consonance with the judicial pronouncements.

8. The respondents have stated that the offence of Money Laundering, consequent investigation and the subsequent Complaint under PMLA are independent of the investigation and the trial of the predicate offence. The commission of predicate offence merely acts as a trigger point for initiation of investigation under PMLA and since it is a distinct offence the persons who aided in the process of Layering, Integration and Projection of proceeds of crime might be third parties to the schedule offence and hence would not have been arrayed as Accused in the Schedule offence. The Respondent on receiving information about commission of Schedule offence has registered ECIR and after conducting investigation duly as contemplated under PMLA, has filed Prosecution Complaint U/s. 44(1) of PMLA along with all the relevant evidence both oral and documentary.

9.1 It is common knowledge of interpretation that any judgment is to be taken as its whole, but the Petitioner has conveniently extracted the portion



which are beneficial to his interest. It is pertinent to take note of the following

extracts from the same case of **Vijay Madanlal Choudhary vs. Union of India and others, reported in 2022 SCC Online 929.** The relevant portion is extracted hereunder

For ease of reference:

"269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property. or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the trial of



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the scheduled offence and the trial in connection with the money-laundering are in any way required to proceed independently. That is because, the offence of money-laundering by itself is an independent offence in respect of the process and activity connected with the proceeds of crime which may have been derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence"

9.2 Further the Government of India vide the Act in the year 2019 inserted explanation to para (d) of Section 44 of PMLA clarifying that "*(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial*".

10. In the case of **The Assistant Director (PMLA), Directorate of Enforcement, Chennai v. Ashok Anand** in **Crl.RC.No.1262 of 2024** dated



25.09.2024, this Court held as follows :-

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“17. In the present case, an application filed under Section 309 Cr.P.C. was allowed. The powers conferred on the High Court under Section 397 (1) would be sufficient to entertain the criminal revision petition against the order passed under Section 309 Cr.P.C. When the High Court is conferred with the powers to verify the correctness and legality of the order, the revision petition would lie. Thus, the maintainability point raised deserves to be rejected.

18. The learned Senior Counsel for the respondent mainly contended that in the event of an acquittal in the criminal appeal in the schedule offence, the respondent is entitled to be exonerated from the PMLA proceedings. In this context, it is relevant to consider the scope of PMLA.

19. Section 65 of PMLA stipulates that "Code of Criminal Procedure, 1973 to apply."Accordingly, the provisions of Code of Criminal Procedure, 1973 shall apply, insofar as



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they are not inconsistent with the provisions of the Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.

20. Section 65 of PMLA stipulates that the special enactment namely PMLA would prevail over Cr.P.C. Thus, the reliance placed on by the learned Senior Counsel would have no assistance to support the case of the respondent. When the procedures contemplated under PMLA are independent and distinct to other penal laws, the same would prevail over the general provisions and the commencement of proceedings under PMLA, thereafter will be a standalone process.

21. Section 71 of PMLA states that the provisions of PMLA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.



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22. *Holistic reading of the provisions of PMLA would indicate that schedule offence is prerequisite condition for initiation of proceedings under PMLA. Once proceedings are initiated under PMLA by recording ECIR, thereafter the investigation and offence of money laundering traced out by the Enforcement Directorate become independent and to be dealt with under the provisions of PMLA and the application of Cr.P.C is undoubtedly limited in view of Section 65 and 71 of PMLA.*

23. *ECIR cannot be equated with FIR. The schedule offence is quintessential for initiation of proceedings and recording of ECIR but both the offences cannot be placed on the same footing. PMLA proceedings are distinct and the said Act is a complete code in itself. Whereas scheduled offences are tried under other penal laws. When two documents are different and distinct in their*



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own nature, a combined reading and implication cannot be adduced to them.

24. ECIR is born from FIR, but once the ECIR is born, the umbilical cord that connects the ECIR with FIR loses its relevance and the ECIR becomes an independent document in itself. Consequently, a new life in the form of ECIR emerges, which has breath on its own without the support of FIR. So, the FIR and ECIR become two different documents and both tend to take shape on its own, independent of each other.

*25. "Proceeds of Crime" is the focal point for an ECIR, whereas scheduled offence is dealt with under the FIR. Further reliance may be relevant with reference to the judgment in the case of *Vijay Madanlal Choudhary vs. Union of India and Others* reported in 2022 SCC Online sc 929 and *Rajinder Singh Chada vs. Union of India*.. Both these judgments have noted the distinction between*



FIR and ECIR. More so, ECIR is treated as an internal document.

26. In Vijay Madanlal's case (supra), the relevant portion to support this contention is, as extracted below;

"457. Suffice it to observe that being a special legislation providing for special mechanism regarding inquiry/investigation of offence of money-laundering, analogy cannot be drawn from the provisions of 1973 Code, in regard to registration of offence of money-laundering and more so being a complaint procedure prescribed under the 2002 Act. Further, the authorities referred to in Section 48 of the 2002 Act alone are competent to file such complaint. It is a different matter that the materials/evidence collected by the same authorities for the purpose of civil action of attachment of proceeds of crime and confiscation thereof may be used to prosecute the person involved in the process or activity connected with the proceeds of crime for offence of



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money-laundering. Considering the mechanism of inquiry/investigation for proceeding against the property (being proceeds of crime) under this Act by way of civil action (attachment and confiscation), there is no need to formally register an ECIR, unlike registration of an FIR by the jurisdictional police in respect of cognizable offence under the ordinary law. There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in 2002 Act requiring Authority referred to in Section 48 to record ECIR or to furnish copy thereof to the Accused unlike Section 154 of the 1973 Code. The fact that such ECIR has not been recorded, does not come in the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by



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following prescribed procedure in that regard."

27. Further, in the case of Rajinder Singh Chada vs. Union of India cited supra, the Delhi High Court held as follows;

"32... Since the ECIR has not been equated with a FIR and has been held to be an internal document, there cannot possibly be a restriction to bringing on record on any subsequent scheduled offence registered by way of an FIR alleged to have been committed in respect of the same transaction which was the subject matter of such ECIR.

34 ...It is clarified that since this Court is of the opinion that the ECIR, as explained in Vijay Madanlal Choudhary (supra) cannot be equated with an FIR and as per the stand of the department, the same is only for administrative purposes, there is no impediment in taking the third FIR on record which related to the same project forming the basis for registration of the first two FIRs.



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resulting in initiation of the impugned ECIR."

28. In cases as such, where initiation of PMLA proceedings prima facie proceeds of crime has been placed, there arises a pertinent question as to whether the Court can stall such proceedings in spite of preliminary findings of the existence of proceeds of crime. The conscience of this Court is directed towards delivery of justice and though the FIR of schedule offence stands quashed or the trial ended with an order of acquittal on mere technical grounds without analysing the merit of the schedule offence, then the case is to be considered on its merits. When "proceeds of crime" is placed in parallel investigation by the Enforcement Directorate, this gives rise to another question once proceeds of crime in prima facie unearthed and ECIR been brushed aside on the ground that the criminal appeal against an order of conviction is pending.



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29. *In the present case, PMLA proceedings are set in motion and prima facie findings have already made, investigation completed and complaint was filed. The Court has to frame charges and proceed with the trial. At this stage, it is not a viable ground to take a view that pendency of criminal appeal against an order of conviction is a bar for the continuance of trial with reference to offence under PMLA.*

30. *A blanket application of the observations made by the Apex Court in Vijay Madhanlal Choudhary's case will not advance the object set out under PMLA, 2002 and in turn will defeat its primary object. The Vijay Madhanlal Choudhary's case is a binding precedent for all Courts below and on careful application of the judgement, analysing on a case to case basis, the output shall defer for each case and not render the same result.*

31. *Therefore, the preposition laid down in Vijay*



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Madhanlal Choudhary's case being applied with reference to the petition filed for quashment of ECIR or complaint need not be applied in the present case, in view of the fact that the respondent has been convicted in the schedule offence and the conviction as on today stands against him and mere pendency of the criminal appeal need not be a ground for postponement of trial in PMLA case.

32. In any angle, pendency of a criminal appeal cannot be an absolute bar for proceeding with the PMLA trial, which is now being undertaken by the Special Court for PMLA. Both the trial in the schedule offence and the trial in the PMLA case are distinct and different and the nature of offences are distinguishable.

33. The wider implications and ramifications of the offence of money laundering cannot be equated with the offence under the other penal laws. The objective of



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PMLA are to protect the economic status of our Country.

Therefore, we are of the considered opinion that the trial court has committed an error in postponement of PMLA trial during the pendency of the criminal appeal. The same claim may be made by the convicted persons on the ground that they have a right of further appeal to the Supreme Court and considering all these facts, we are inclined to interfere with the order impugned.

11. In the case of **Pallab Singh v. The Deputy Director, Directorate of Enforcement, Chennai** in **Crl.RC.No.1697 and 1699 of 2022** dated **30.08.2024**, this Court reiterated the principles again as under :-

“14. With reference to the question raised, whether mere acquisition of Proceeds of Crime/accumulation of money by indulging in corrupt practice will fall under the ambit of Section 3 of PMLA or not, has been replied by the respondents as under :-

"Reliance is placed on the ruling laid down by the Hon'ble Supreme Court of India in the case of Vijay



Madanlal Choudhary vs Union of India, had stated as follows:

"467. (v)(a) Section 3 of the 2002 Act has a wider reach and captures every process and activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. The Explanation inserted to Section 3 by way of amendment of 2019 does not expand the purport of Section 3 but is only clarificatory in nature. It clarifies the word "and" preceding the expression projecting or claiming as "or"; and being a clarificatory amendment, it would make no difference even if it is introduced by way of Finance Act or otherwise.

(b) Independent of the above, we are clearly of the view that the expression "and" occurring in Section 3 has to be construed as "or", to give full play to the said provision so as to include "every" process or activity indulged into by anyone. Projecting or claiming the



property as untainted property would constitute an offence of money-laundering on its own, being an independent process or activity.

(c) The interpretation suggested by the petitioners, that only upon projecting or claiming the property in question as untainted property that the offence of Section 3 would be complete, stands rejected".

15. Therefore, it is submitted that the Act of the Petitioners, indulging in corrupt practice, amounts to an offence of money laundering as per the definition under Section 3 of PMLA and the Petitioners can discharge the burden under Section 24 of PMLA by establishing that the attached properties were not involved in money laundering and that they have not committed any offence under PMLA only during trial. Prima facie case is made out against the Petitioners and they cannot be discharged at this stage.

16. Hence the contention that the mere possession of



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tainted money was not an offence at that time cannot be countenanced in view of the clear dictum laid down by the Hon'ble Supreme Court. Therefore, the ground raised by the Petitioners that the offence of money laundering is not made in this case deserves to be rejected."

17. Whether retrospective effect can be given to amendment made to Section 3 of PMLA, though the predicate offence was registered in the year 2009, was considered by the Hon'ble Supreme Court of India in the case of Vijay Madanlal Chaudhary Vs. Union of India cited supra and the relevant paragraph is extracted as under:

"270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a



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continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act-for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision



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(Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all".

Hence, the learned counsel for the respondent submits that the said contention under para (a) to (i) are liable to be dismissed.

18. The expression "money-laundering", ordinarily, means the process or activity of placement, layering and finally integrating the tainted property in the formal economy of the country. However, Section 3 has a wider reach. The offence, as defined, captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money-laundering. This is amply clear from the original provision, which has been further clarified by insertion of Explanation vide Finance (No. 2) Act, 2019,



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Section 3, as amended. The act of projecting or claiming proceeds of crime to be untainted property presupposes that the person is in possession of or is using the same (proceeds of crime), also an independent activity constituting offence of money-laundering. In other words, it is not open to read the different activities conjunctively because of the word "and". If that interpretation is accepted, the effectiveness of Section 3 of the 2002 Act can be easily frustrated by the simple device of one person possessing proceeds of crime and his accomplice would indulge in projecting or claiming it to be untainted property so that neither is covered under Section 3 of the 2002 Act. Thus, a person who is as long as in possession and enjoyment of Proceeds of Crime, PMLA can certainly be invoked. The subsequent amendments made to the PMLA in respect of Section 3 of PMLA has been upheld by the Hon'ble Supreme Court of India on the premise that all the said amendments are clarificatory in nature.



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19. *Whether mere receipt of bribe money is an act of money laundering or not is elaborately considered by the Apex Court of India in the case of Y.Balaji Vs. Karthik Dasari – Manu/SC/0584/2023 as follows:-*

"99. It is this bribe money that constitutes the 'proceeds of crime' within the meaning of section 2(1)(u) of PMLA. It is no rocket science to know that a public servant receiving illegal gratification is in possession of proceeds of crime. The argument that the mere generation of proceeds of crime is not sufficient to constitute the offence of money-laundering, is actually preposterous. As we could see from Section 3, there are six processes or activities identified therein. They are, (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting as untainted property; and (vi) claiming as untainted property. If a person takes a bribe, he acquires proceeds of crime. So, the activity of "acquisition" takes place. Even if he does not retain it but "uses" it, he will be guilty of the offence of money-laundering, since "use"



is one of the six activities mentioned in Section 3".

20. The Division Bench of this Court, in the case of **Padmanabhan Kishore Vs. Directorate of Enforcement – 2022 SCC online SC 1490**, supported the views raised by the petitioner in the present revision petition. However, the said case was taken by way of an appeal before the Hon'ble Supreme Court of India by the Enforcement Directorate in the case of **Directorate of Enforcement Vs. Padmanabhan Kishore- Manu/SC/1412/2022**. The Hon'ble Supreme Court of India, while reversing the judgment of the Division Bench of this High Court, held as follows:-

"16. It is true that so long as the amount is in the hands of a bribe giver, and till it does not get impressed with the requisite intent and is actually handed over as a bribe, it would definitely be untainted money. If the money is handed over without such intent, it would be a mere entrustment. If it is thereafter appropriated by the public servant, the offence would be of



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misappropriation or species thereof but certainly not of bribe. The crucial part therefore is the requisite intent to hand over the amount as bribe and normally such intent must necessarily be antecedent or prior to the moment the amount is handed over. Thus, the requisite intent would always be at the core before the amount is handed over. Such intent having been entertained well before the amount is actually handed over, the person concerned would certainly be involved in the process or activity connected with "proceeds of crime including inter alia, the aspects of possession or acquisition thereof. By handing over money with the intent of giving bribe, such person will be assisting or will knowingly be a party to an activity connected with the proceeds of crime. Without such active participation on part of the person concerned, the money would not assume the character of being proceeds of crime. The relevant expressions from Section 3 of the PML Act are thus wide enough to cover the role played by such person.



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17. On a bare perusal of the complaint made by the Enforcement Directorate, it is quite clear that the respondent was prima facie involved in the activity connected with the proceeds of crime."

21.The very same Division Bench, in the subsequent judgment in the case of **R.Kannan Vs. Assistant Director, Directorate of Enforcement in Crl.O.P. No. 27174 of 2022 dated 16.12.2022**, followed the ratio laid down by the Hon'ble Supreme Court in the case of **Directorate of Enforcement Vs.Padmanabhan Kishore(supra)**.The DivisionBench relied on Paragraph Nos. 14 and 15 of the said judgement which reads as under:-

"14. The further question to be answered is : whether the role played by respondent could come within the purview of Section 3 of the PML Act?

15. Said Section 3 states, inter alia, that whoever knowingly assists or knowingly is a party or is actually



involved in any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use shall be guilty of offence of money-laundering."

12. In the context of the facts and the judicial pronouncements as stated above, pertinently, Section 44 of PMLA enumerates offences triable by the Special Courts.

13. Explanation (i) & (ii) to Section 44 (1) of PMLA in unequivocal terms removed the doubts and clarifies that *"the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial"*

14. The Prevention of Money Laundering Act is a code in itself and the procedures contemplated are distinct and different. Section 65 & 71 of PMLA clarifies the said position.



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15. The complaint under the PMLA has been filed under Section 45 of PMLA, which cannot be equated with the final report in the predicate offence. When the procedures contemplated under the PMLA is distinct and different from that of general penal laws, the special enactment will prevail over the general law. Thus the very ground raised that the PMLA trial is to be kept in abeyance till the completion of predicate offence trial is untenable and unmerited.

16. The seriousness of the economic offences and its implications at the national and international level were taken into consideration under the special enactments viz., PMLA.. Therefore, the offences of money laundering are to be dealt with under the provisions of PMLA in *stricto sensu*.

17. Any attempt to increase the longevity of PMLA trial at no circumstances be encouraged by the Courts. The offences under PMLA is not dependant on the predicate offence after filing of the complaint under section 45 PMLA. The trial must go on, as it is clarified in explanation (i) to Section 44(1) of PMLA. Therefore, we direct the Special Court to proceed with the PMLA trial and conclude the same as expeditiously as possible. However, we made it



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clear that the trial must go on uninfluenced by the observation if any made by this Court in the present order, with reference to the facts.

18. Accordingly, the order impugned stands confirmed and consequently, the Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

[S.M.S., J.]

[M.J.R., J.]

27.11.2024

Index: Yes/No
Speaking/Non-speaking order
rka

To

1. Assistant Director
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2.The Public Prosecutor
High Court Madras.

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S.M. SUBRAMANIAM, J.
AND
M. JOTHIRAMAN, J.

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